

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 200 – HB 194

March 26, 2013

SUMMARY OF ORIGINAL BILL: Increases, from five to seven years, the minimum amount of experience that the Administrator of the Division of Workers' Compensation must have in the field of workers' compensation. Requires claims for compensation be heard by a workers' compensation specialist rather than the Commissioner or Commissioner's designee. Decreases, from 90 to 75 days, the amount of time a claimant has to file a claim with the Claims Commission in the event an agreement cannot be reached at a benefit review conference. Increases, from 30 to 45 days, the amount of time following cessation of participation in the Second Injury Fund that a legal or administrative entity may elect to assume complete liability for a claim. Increases, from 30 to 45 days, the amount of time prior to an occurrence of any injury or death that a sole proprietor or partner must have filed written notice to be considered an employee. Increases, from 30 to 45 days, the amount of time after a first manifestation of an occupational disease that an employee is required to give written notice to the employer.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENTS (004568, 004912, 005574): Amendment 004568 deletes all language after the enacting clause. Effective upon becoming law for implementation purposes. Effective January 1, 2014, for all other purposes. Deletes and rewrites workers' compensation law. Separates the Division of Workers' Compensation (DWC) from the Department of Labor and Workforce Development, except for administrative matters only. Requires the Administrator of the DWC to be appointed by the Governor for a six-year term. Defines "maximum total benefits" for injuries occurring on, or after July 1, 2014, as 450 times 100 percent of the state's average weekly wage. Authorizes the Administrator to assess a fee up to \$250 for an appeal of any utilization review decision. Authorizes certain civil penalties for violations of workers' compensation law. Decreases, from 15 to 7, the number of voting members on the medical payment committee. Requires the appointment of a medical advisory committee. Establishes an alternative dispute method for resolving claims with a workers' compensation mediator. Creates the Court of Workers' Compensation Claims composed of judges for the adjudication of claims. Requires the Governor to appoint three judges to serve six-year terms. Authorizes a workers' compensation judge to assess discretionary fees for depositions of medical experts. Authorizes an appeal to a panel of three judges, including one member of the Supreme Court of Tennessee. Replaces the workers' compensation specialist

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program with a mediator program to assist employees and employers to conduct alternative dispute resolutions. Establishes an ombudsman program to assist employees and employers that are not represented by an attorney in a claim. Authorizes the Administrator to charge a filing fee sufficient to offset the costs of administering the program. Requires an education and training program for mediators, judges, and ombudsmen. Amendment 004912 makes technical corrections to the bill as amended. Amendment 005574 makes technical corrections to the bill as amended.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Increase State Revenue –

\$322,700/FY13-14/General Fund

\$1,650,900 /FY14-15/General Fund

\$2,029,200/FY15-16/General Fund

\$2,407,600/FY16-17 and Subsequent Years/General Fund

Increase State Expenditures –

\$850,300/FY13-14/General Fund

\$1,511,200/FY14-15/General Fund

\$1,638,600/FY15-16 and Subsequent Years/General Fund

Decrease State Expenditures –

\$54,000/FY13-14/Second Injury Fund

\$108,000/FY14-15 and Subsequent Year/Second Injury Fund

Decrease Local Revenue – \$531,000/FY13-14

\$1,327,400/FY14-15 and Subsequent Years

Decrease Local Expenditures –

Exceeds \$10,000/FY13-14

Exceeds \$20,000/FY14-15 and Subsequent Years

The Governor's recommended budget for FY13-14 includes funding in the amount of \$600,000 from the General Fund and \$1,200,000 from fees paid by employers.

Assumptions for the bill as amended:

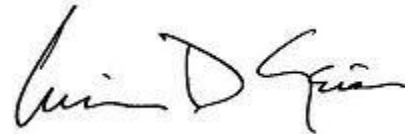
- The Department of Labor and Workforce Development (DLWD) expects 12,420 cases on average by FY16-17. Until FY16-17, there will be a portion of cases still being processed under current law.
- An increase in fee revenue of \$244,716 in FY13-14, of \$1,455,891 in FY14-15, of \$1,834,242 in FY15-16, of \$2,212,594 in FY16-17 and subsequent years.

- DLWD expects approximately 780 appeals per year. Based on information provided by DLWD, fee revenue for appeals will average \$195,000 per year. The first-year revenue for appeals will be approximately 40 percent of the recurring amount. Therefore, an increase in state revenue of \$78,000 in FY13-14 and \$195,000 in FY14-15 and subsequent years.
- An increase in state revenue to the General Fund of \$322,716 in FY13-14, of \$1,650,891 in FY14-15, of \$2,029,242 in FY15-16, and \$2,407,594 in FY16-17 and subsequent years.
- Based on information provided by DLWD, twenty existing attorney positions in the Workers' Compensation Division will convert to 16 Workers' Compensation Judge positions, one Chief Judge position, and three Administrative Review Board Judge positions. The salaries and benefits for the new positions will cause a recurring increase in state expenditures because salaries and benefits for the new positions are greater than the salaries and benefits for the former positions. The recurring increase in state expenditures for salaries is estimated to be \$983,456. The recurring increase in state expenditures for benefits is estimated to be \$291,000.
- Based on information provided by DLWD, 34 Workers' Compensation Specialists 2 and 3 positions will convert to Workers' Compensation Mediator positions. The recurring increase in state expenditures for salaries is estimated to be \$37,980. The recurring increase in state expenditures for benefits is estimated to be \$5,708.
- Based on information provided by DLWD, five Workers' Compensation Specialist 1 positions will convert to one ombudsman position and four Workers' Compensation Specialist 2 positions. The recurring increase in state expenditures for salaries is estimated to be \$9,219. The recurring increase in state expenditures for benefits is estimated to be \$1,386.
- Based on information provided by DLWD, the new program will require six Legal Assistants. The recurring increase in state expenditures for salaries is estimated to be \$192,000. The recurring increase in state expenditures for benefits is estimated to be \$64,853. There will also be additional recurring state expenditures estimated to be \$18,000 for operational expenditures.
- A one-time increase in state expenditures of \$10,000 for supplies and equipment for the new employees.
- Reducing the size of the Medical Payment Committee and creating the Medical Advisory Committee will result in a net recurring increase in state expenditures of \$10,000 for meeting cost reimbursements.
- Based on information provided by DLWD, recurring education expenses for judges, mediators, and ombudsmen are estimated to be \$25,000. There will be an additional first-year cost of \$21,000 for initial training.
- A total one-time increase in state expenditures from the General Fund of \$31,000 (\$10,000 + \$21,000).
- A portion of the judges will be appointed in FY14-15, with the remainder appointed in FY15-16. The total recurring increase in state expenditures for salary and benefits for all judges beginning in FY15-16 is \$1,274,456 (\$983,456 + \$291,000). In FY14-15, the expenditure is estimated to be 90 percent of the total recurring estimate. Therefore, an increase in state expenditures of \$1,147,010 (\$1,274,456 x 90%) in FY14-15.

- An increase in state expenditures from the General Fund of \$1,511,156 (\$1,147,010 + \$37,980 + \$5,708 + \$9,219 + \$1,386 + \$192,000 + \$64,853 + \$18,000 + \$10,000 + \$25,000) in FY14-15.
- A recurring increase in state expenditures from the General Fund of \$1,638,602 (\$1,274,456 + \$37,980 + \$5,708 + \$9,219 + \$1,386 + \$192,000 + \$64,853 + \$18,000 + \$10,000 + \$25,000) beginning in FY15-16.
- Due to a January 1, 2014 effective date, the expenditures for FY13-14 will be approximately half of the total recurring expenditures plus one-time costs. An increase in state expenditures from the General Fund of \$850,301 [(\$1,638,602 x 50%) + \$31,000 one-time costs] in FY13-14.
- The Department of Labor and Workforce Development anticipates an increase in the number of claims from the Second Injury Fund that are overturned by the court annually. Those claims will be reimbursed to the Second Injury Fund and will decrease the net expenditures from the Fund.
- A decrease in state expenditures from the Second Injury Fund of \$54,000 in FY13-14.
- A recurring decrease in state expenditures from the Second Injury Fund of \$108,000 in FY14-15 and subsequent years.
- The Governor's recommended budget for FY13-14 includes funding in the amount of \$600,000 from the General Fund and \$1,200,000 from fees paid by employers on page B-296 of the publication.
- Currently, cases are filed in chancery and circuit courts. The total recurring decrease in local revenue from filing fees and closing fees will be \$1,327,375.
- Due to an effective date of January 1, 2014, and some cases that were opened in local courts still being processed after the effective date, the impact in FY13-14 is expected to be 40 percent of the total recurring impact.
- A decrease in local revenue of \$530,950 (\$1,327,375 x 40%) in FY13-14.
- A recurring decrease in local revenue of \$1,327,375 in FY14-15 and subsequent years.
- There will be a decrease in local expenditures for courts no longer processing the above filings. The impact on expenditures cannot be precisely determined, but is reasonably estimated to exceed \$10,000 statewide in FY13-14 and exceed \$20,000 in FY14-15 and subsequent years.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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